IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN, JAIPUR BENCH, JAIPUR

S. B. CIVIL MISC. APPEAL NO. 2306/2006

Ajit Sharma v Rampal Sharma & Ano.

Date of Judgment: 15th May 2007

Hon'ble Mr. Justice R. S. Chauhan

Mr. Arvind Gupta for the Appellant
Mr. R.K. Agarwal for the Respondent No. 1.

(Per Court):

This appeal questions the validity of the order dated 4-5-2006, passed by Additional District Judge, No. 2, Jaipur District, whereby the learned Judge has dismissed the application of temporary injunction filed under Order 39, Rules 1 and 2 of the Civil Procedure Code ('the Code', for short), by the appellant.

In a nutshell the facts of the case are that the appellant filed a civil suit for specific performance, for declaration and injunction against respondent No. 1. According to the plaint, the father of the respondent No.

1, Damodar Lal, had about 15.18 hectares of agriculture land in Village Labana, Tehsil Amber, District Jaipur. After the death of Damodar, the respondent No. 1 inherited half the share of the said agriculture land. While he got 7.59 hectares of land, his brother, Gopal Lal got the other 7.59 hectares of land. On 3-4-2005, the respondent No. 1 and the appellant entered into an agreement to sale with regard to the part of the land owned by the respondent No. 1. According to the said agreement, the respondent No. 1 had agreed to sell the land for a consideration of Rs. 21 lacs. On 3-4-2005, the appellant paid Rs. 15 lacs to the respondent No. 1 in cash. The remaining amount of Rs. 6 lacs were to be paid at the time of the registration of the sale deed which was to be registered within three months and latest by 30-6-2005. The appellant was always willing to fulfill his side of the agreement. Thrice, on 12-6-2005, 19-6-2005, and 30-6-2005, the appellant offered the remaining amount to the respondent No. 1 and requested him to get the sale deed registered. However, the respondent No. 1 kept on postponing the

registration of the sale deed. Therefore, on 19-7-2005, the appellant even sent a legal notice to the respondent No. 1. However, the respondent No. 1 did not bother to reply to the said notice. Hence, the appellant filed the civil suit as indicated above. Along with the suit petition, the appellant also filed an application for temporary injunction.

The respondent No. 1 filed his written statement and denied the averments of the plaint. According to the respondent No. 1, he never entered into an agreement to sale with the appellant on 3-4-2005. The said agreement is a forged document. He, further, denied having received any money from the appellant. According to him, he had entered into an agreement to sale with two persons, namely Shri. Prakash Chand Jain and one Mr. Rafiq Khan on 8-7-2005 for a consideration of Rs. 1, 42, 52,000/-. Lastly, he claimed out of the said amount, he has received about Rs. 21 Lacs from the two persons.

In rejoinder, the appellant denied the averments of the written statement and pointed out that the respondent No. 1 has not even bothered to place the original copy of the alleged agreement to sale entered on 8-7-2005 between the respondent No. 1 and the two persons.

After hearing both the parties, vide order dated 4-5-2006, the learned Judge dismissed the application for temporary injunction. Hence, this appeal before this court.

Mr. Arvind Gupta, the learned counsel for the appellant, has vehemently argued that the learned Judge has decided the application for temporary injunction as though he were deciding the suit finally. According to him, at the stage of temporary injunction, the court does not hold a mini-trial. Therefore, the court cannot go into the probative value of the documents. However, the learned court has erred in accepting the contention of respondent No. 1, that the agreement to sale dated 3-4-2005 is a fake one. In the absence of cogent evidence, it is too early for

the court to come to this conclusion at the initial stage of the trial. Secondly, while considering the temporary injunction application, the court is not supposed to go into the merits of the case. In order to buttress his argument, the learned counsel has relied upon the case of Narendra Singh Rajawat & Ors. v Tahkur Mohan Singh Kanota & Ors. (2002 (2) WLC 362). Thirdly, while the appellant had submitted the agreement to sale dated 3-4-2005, the respondent No. 1 has submitted only a copy of the alleged agreement to sale dated 8-7-2005. Despite the original document not being brought on the record, on the basis of secondary evidence--the copy--the learned Judge has believed the genuineness of the said document. Fourthly, in case the status quo were not maintained, then the respondent No. 1 might sell of the property in dispute to another person, and the sale may go on ad infinitum. Such a scenario would give rise to third-party rights and would lead to multiplicity of litigation. The courts should avoid encouraging multiplicity of litigation. Fifthly, when an immovable property is the focus

of dispute, the subject matter—the property—should be preserved. In case the respondent No. 1 is not restrained, he may change the very nature of the property. In such a case, the entire suit for specific performance would become an academic exercise. Lastly, not only the prima facie case, but also the balance of convenience is in the favor of the appellant. In case the land is sold, alienated, mortgaged,
or transferred, then an irreparable loss would be caused to the appellant.

On the other hand, Mr. R. K. Agarwal, the learned counsel for the respondent No. 1, has raised a plethora of contentions: firstly, in order to consider the validity of an agreement, the court would have to examine the adequacy of the consideration paid for the land. According to the learned counsel, the property in dispute is worth above Rs. 1 Crore, yet according to the appellant, the respondent No. 1 had agreed to sell the property for only Rs. 21 lacs. Clearly, if the market value

is above Rs. 1 Crore, then the alleged consideration agreed between the appellant and the respondent No. 1 is too inadequate. Hence, the agreement to sale dated 3-4-2005 is invalid. Secondly, the said agreement is not on an adequate stamp paper. According to Entry 5 of the Schedule attached to the Rajasthan Stamp Act, 1998, the stamp duty payable on the sale of immovable property is 3% of the total consideration of the property as set forth in the agreement. In case the appellant's contention is accepted that the land was sold for Rs. 21 lacs, then the stamp duty payable on the instrument is Rs. 63,000/-. Yet, the agreement to sale is written on a stamp paper of Rs. 100. Moreover, according to Section 39 of the Rajasthan Stamp Act, instruments not duly stamped are inadmissible in evidence. Hence, the said agreement is inadmissible in evidence for any purpose. In order to buttress his case, the learned counsel has relied upon the cases of District Registrar and Collector v Canara Bank & Ors. {(2005) 1 SCC 496}, LRs of Shri Niwas & Ors. v LRs of Shanker Lal {1994 (3) WLC (Raj) 433}. Thirdly, under

Section 20 of the Specific Relief Act, 1963, the court is not required to pass a decree for specific performance of the agreement to sale. It can, in its wisdom, grant damages to the plaintiff for breach of the agreement. Fourthly, in case the respondent No. 1 is restrained from transferring the property, he would lose the consideration for which he is entitled to under the agreement to sale dated 8-7-2005. Hence, the balance of convenience is in his favor.

We have heard the learned counsels for the parties, have considered the case law cited at the Bar and have examined the impugned order.

It is, indeed, a settled principle of law that the proceedings pertaining to grant of temporary injunction are supplementary in nature. Therefore, the court should refrain from entering into the merits of the case. In the case of Anand Prasad Agarwalla v Tarkeshwar Prasad & Ors ((2001) 5 SCC 568), their Lordships of the Hon’ble

Supreme Court observed, “it may not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction.” Similarly this court has held in the case of Narendra Singh Rajawat & Ors (supra), “It is well settled that while granting temporary injunction the court cannot be regarded (sic) to deal with the suit on merits. The proceedings pertaining to grant of temporary injunction are supplemental proceedings and the court should refrain from giving a finding on the merits of the case.” Likewise in the case of Misrhi Lal & Ano. v Ram Dev & Ors (1998 WLC (UC) (Raj) 610) this court held, “the Court examines the documents only for the purpose of seeing whether a prima facie case is made out or not. If in an application under Order 39, rules 1 and 2 of C. P. C., the Court started finally determining the probative value of a document, great injustice will be done to the parties.”

However, a bare perusal of the impugned order clearly reveals that the learned Judge has entered into

the merits of the case. The learned Judge has given a finding about the genuineness of the agreement to sale dated 3-4-2005. Such a judicial finding at the initial stage, that too, in the absence of cogent evidence, could not and should not have been given. The Learned Judge has decided the application for temporary injunction as though he were deciding the suit itself. Thus, he has over-stepped his jurisdiction. Therefore, the impugned order is unsustainable.

Mr. R. K. Agarwal has argued that since the agreement dated 3-4-2005 was not duly stamped as required by the Rajasthan Stamp Act, under Section 39 of the said Act, the document could not be admitted in evidence. However, the case law cited by him on this point is distinguishable on the facts of the present case. The case of Canara Bank (supra) dealt with the constitutional validity of Section 73 of the Indian Stamp Act, 1899 (as amended by A.P. Act 17 of 1986). The Hon’ble Supreme Court upheld the decision of the Andhra

Pradesh High Court and declared the amended Section 73 of the Act, as amended by Andhra Pradesh, as unconstitutional. In the present case before us, the validity of a provision of Stamp Act is not under challenge. Thus, the case of Canara Bank does not support the case of the respondent No. 1.

Similarly, the case of LRs of Shankar Lal (supra) dealt with the admissibility of a partition deed, which was neither stamped, nor registered. However, no such question exists before us. Thus, even the said case does not come to the rescue of the respondent. Suffice it to say, that in the case of Dr. Chiranji Lal (D) by LRs. v Hari Das (D) by LRs. {(2005) 10 SCC 746}, the Hon'ble Supreme Court has held, " The object of the Stamp Act being securing revenue for the State, the scheme thereof provides that a decree of partition not duly stamped can be impounded and once the requisite stamp duty along with the penalty, if any, is paid, the decree can be acted upon. The Stamp Act is not enacted to arm a litigant with

a weapon of technicality to meet the case of his opponent.” (Emphasis added). Thus, a technical plea cannot be entertained to meet the case of the appellant, that too, at the initial stage.

Moreover, a bare perusal of Section 39 of the Rajasthan Stamp Act also reveals that in case the instrument is not duly stamped, the defect is curable. According to the proviso (a) of Section 39, “any such instrument shall, subject to all just exceptions, be admitted in evidence on payment of, I) the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, of the amount required to make up such duty, and ii) a penalty of one hundred rupees, or, ten times the amount of deficient portion thereof, whichever is higher.” Since the defect is curable, appropriate chance should be given to the appellant to cure the defect during the pendency of the proceedings. Thus, it is too early in the day to reject the temporary injunction application on the ground that the agreement to

sale dated 3-4-2005 is insufficiently stamped. Therefore, the contention raised by Mr. R. K. Agarwal cannot be accepted.

Even the other contention raised by Mr. R. K. Agarwal with regard to the power of the court under Section 20 of the Specific Relief Act is unacceptable. For the power given to a court by Section 20 of the said Act cannot be invoked at the initial stage of deciding the application for temporary injunction. The said discretion can be exercised validly only after considering the entire evidence produced by the parties during the course of the proceedings. Hence, whether damages should be paid, or a decree for specific performance of the agreement dated 3-4-2005 should be passed, are issues, which cannot be dealt by the learned trial court at this stage. The trial court is free to decide the said issues at the end of the proceedings.

Disputes over property can lead to legal

complications. They may lead to either proliferation of lawsuits, or to law and order problem. In either case, the scenario has serious consequences for the society at large. Mushrooming of litigation is a luxury the Judiciary cannot afford, burdened as the Indian Judiciary is with backlogs and skyrocketing litigation. Furthermore, the courts should not encourage the rise in law and order problems. Therefore, in the case of Maharwal Khewaji Trust (Regd.), Faridkot v Baldev Dass (AIR 2005 SC 104), the Hon'ble Supreme Court opined that in case of dispute over property generally status quo should be maintained. This court has expressed similar view in the cases of Smt. Rama Devi & Ors v The Sanganer Cooperative Housing Society Ltd (1986 RLR 1018).

In the result, this appeal is allowed and the order dated 4-5-2006 is quashed and set aside. The parties are directed to maintain the status quo on the disputed property during the pendency of the suit. However, as the suit has been pending for the last two years, the learned

trial court is directed to finally decide the case as expeditiously as possible. The parties are expected to cooperate with the learned trial court for an early decision of the case.

R. S. Chauhan J.